

The Honorable Benjamin H. Settle

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,
for the Use and Benefit of HARRIS PACIFIC
NORTHWEST, LLC,

Plaintiff,

v.

TRAVELERS CASUALTY AND SURETY
COMPANY OF AMERICA,
a Connecticut corporation,

Defendant.

And

WALSH CONSTRUCTION COMPANY, an
Illinois corporation,

Intervenor.

No. 3:21-cv-05285-BHS

JOINT STATUS REPORT,
STIPULATION, AND
ORDER RE STAY OF
PROCEEDINGS

COME NOW, Plaintiff Harris Pacific Northwest, LLC (“**Harris Pacific**”), Defendant Travelers Casualty and Surety Company of America (“**Travelers**”), and Intervenor Walsh Construction Company (individually “**Walsh**” and collectively, the “**Parties**”) through their counsel of record, to present the following status report and stipulation for a continued stay of proceedings and a continuance of any court deadlines related to the above-captioned action.

1 The Parties stipulate to the following facts:

2 1. A Complaint was filed by Harris Pacific in the above-captioned action.

3 2. The above-entitled action concerns a Miller Act Claim for subcontract work by
4 Harris Pacific for Walsh.

6 3. The subcontract work concerns a construction project where Walsh is acting as
7 the General Contractor and for which the Department of the Navy – Naval Facilities
8 Engineering Command Northwest (“NAVFAC”) is the Owner.

10 4. Walsh has submitted requests for equitable adjustment to NAVFAC, hereinafter
11 referred to as the “Owner claims.” The Owner claims include Walsh’s own requests for
12 increased costs and time attributable to NAVFAC, and the Owner claims also include the
13 updated claim from Harris Pacific that was submitted to Walsh on or about April 15, 2022.

15 5. Travelers is the surety for Walsh’s payment bond submitted pursuant to the
16 Miller Act.

17 6. Walsh submitted Harris Pacific’s claims to NAVFAC together with Walsh’s
18 own claim and claims of other subcontractors on the same project. Having previously obtained
19 some relief from the Government based on project delays and impacts attributable to NAVFAC,
20 Walsh supports Harris Pacific’s entitlement to equitable compensation from the Government to
21 the extent that the mechanical subcontractor sustained cost impacts from the same issues. On
22 September 30, 2022, NAVFAC informed Walsh that, due to the complexity of the issues
23 identified in the claim as well as audits to be performed, the Government could not issue a final
24 Contracting Officer’s decision before March 30, 2023. However, on March 31, 2023, NAVFAC
25 advised Walsh that it would need additional review time to issue a Contracting Officer’s Final
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1 Decision, stating that such a decision will be issued on or before October 31, 2023. Based on
2 this representation, the parties agreed to stay this matter until mid-December 2023, and this
3 Court subsequently granted that stay.
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5 7. NAVFAC subsequently advised Walsh that the target date for issuing a
6 Contracting Officer's Final Decision has slipped to on or around December 20, 2023.

7 8. The NAVFAC finally issued its COFD on March 8, 2024.

8 9. On June 4, 2024, Walsh appealed the Contracting Officer's Final Decision to
9 the Armed Services Board of the Contract Appeals. This appeal includes Harris Pacific's claims,
10 as well as Walsh's claim and the claims of at least one other subcontractor on the same project.

11 10. As outlined in the previous status reports, Walsh notes that Article 11 of its
12 subcontract with Harris Pacific (attached as Exhibit B to Harris Pacific's Complaint) requires
13 the subcontractor to stay and suspend any legal action against Walsh and Travelers until
14 Walsh's claims against NAVFAC have been adjudicated. Harris Pacific responds that such
15 language in the subcontract cannot support extension of the subcontractor's Miller Act rights
16 for an unreasonable period of time and is also conditioned upon Walsh diligently and
17 expeditiously pursuing a pass-through claim on behalf of Harris-Pacific. The Parties do not
18 believe that this issue needs to be decided by the Court at this point, however, because Walsh
19 is pursuing an appeal and Harris Pacific is therefore willing to accept another stay.
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21 11. The Parties further agree that by entering into this stipulation, neither Travelers,
22 Walsh, nor Harris Pacific is waiving or releasing its rights and defenses under the Miller Act or
23 under Article 11 of the subcontract, including but not limited to Walsh's contractual right to
24 demand arbitration of any remaining claims between Walsh and Harris Pacific.
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12. By entering into this stipulation, the Parties are attempting to avoid unnecessary costs and fees and neither party waives any claims, counterclaims, affirmative defenses, or defenses, and all such rights are expressly reserved.

13. Based on the above facts, the Parties jointly move, stipulate, and agree to, entry of an order by the Court in the above-titled action:

a. staying proceedings for an additional six (6) months;

b. continuing any deadlines by six months;

c. requiring the Parties to file with the Court, no later than six months from the entry of the order below, a joint report regarding the status of the Owner claims, and the Parties' positions as to any further extension of the stay and continuance.

DATED this 23rd day of July, 2024.

AHLERS CRESSMAN & SLEIGHT PLLC

SMITH, CURRIE & OLES LLP

By: /s/ Lindsay T. Watkins via e-mail authorization

John P. Ahlers, WSBA #13070

Lindsay T. Watkins, WSBA #43012

Lindsay.Watkins@acslawyers.com

John.Ahlers@acslawyers.com

1325 Fourth Avenue, Suite 1850

Seattle, WA 98104-2573

Phone: (206) 287-9900

Fax: (206) 934-1139

Attorneys for Defendant and for Intervenor Walsh Construction Company

By: /s/ Douglas S. Oles

Douglas S. Oles, WSBA #9366

Nicole Wolfe, WSBA #45752

dsoles@smithcurrie.com

newolfe@smithcurrie.com

600 University Street, Suite 1800

Seattle, WA 98101

Phone: (206) 623-3427

Fax: (206) 682-6234

Attorneys for Plaintiff

ORDER

Pursuant to the above stipulation, this action and all related deadlines are STAYED for a period of six months from the date of entry of this Order. No later than six months from the date of entry of this Order, the Parties shall file with the Court a report regarding the status of the Owner claims referred to in the stipulation of the Parties and the Parties' positions as to any further extension of the stay.

IT IS SO ORDERED this 23rd day of July, 2024.



BENJAMIN H. SETTLE
United States District Judge

Presented by:

AHLERS CRESSMAN & SLEIGHT PLLC

SMITH, CURRIE & OLES

By: /s/ Lindsay T. Watkins via e-mail authorization

John P. Ahlers, WSBA #13070 Lindsay T.

Watkins, WSBA #43012

Lindsay.Watkins@acslawyers.com

John.Ahlers@acslawyers.com

1325 Fourth Avenue, Suite 1850

Seattle, WA 98104-2573

Phone: (206) 287-9900

Fax: (206) 934-1139

*Attorneys for Defendant and for Intervenor Walsh
Construction Company*

By: /s/ Douglas S. Oles

Douglas S. Oles, WSBA #9366

Nicole E. Wolfe, WSBA #45752

dsoles@smithcurrie.com

newolfe@smithcurrie.com

600 University Street, Suite 1800

Seattle, WA 98101

Phone: (206) 623-3427

Fax: (206) 682-6234

Attorneys for Plaintiff

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STIPULATION AND ORDER RE STAY OF
PROCEEDINGS - 6
[CASE NO. 3:21-cv-05285-BHS]

SMITH, CURRIE & OLES
600 UNIVERSITY ST, SUITE 1800
SEATTLE, WA 98101
PHONE: (206) 623-3427
FAX: (206) 682-6234

CERTIFICATE OF SERVICE

I hereby certify that on the date listed below I caused the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following counsel of record:

Lindsay T. Watkins
Jonathan P. Ahlers
Ahlers Cressman & Sleight PLLC
1325 Fourth Avenue, Suite 1850
Seattle, WA 98104
Emails: Lindsay.watkins@acslawyers.com
John.Ahlers@acslawyers.com

*Attorneys for Defendant Travelers Casualty and Surety Company of
America and Walsh Construction Company*

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED: This 23rd day of July, at Seattle, Washington.

/s/Catherine A. Trimbour
Catherine A. Trimbour, Legal Assistant